

# HOUSE BILL REPORT

## SSB 5972

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**Title:** An act relating to the surface mining reclamation act.

**Brief Description:** Providing the department of natural resources with more consistent enforcement authority for protection against mining without a permit.

**Sponsors:** Senate Committee on Natural Resources, Ocean & Recreation (originally sponsored by Senators Morton, Jacobsen, Swecker, Rockefeller, Poulsen, Rasmussen, Hargrove and Shin).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 3/28/07 [DP].

**Brief Summary of Substitute Bill**

- Modifies and expands the Department of Natural Resources' regulatory and enforcement authority over surface mine reclamation.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 14 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

**Staff:** Colleen Kerr (786-7168).

**Background:**

In Washington, "reclamation" means rehabilitation of disturbed areas resulting from surface or underground mining to reestablish the vegetative cover, soil stability, and water conditions at the site. Surface mining activities in Washington consist primarily of rock, sand, and gravel mining.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Legislature has designated the Department of Natural Resources (DNR) to regulate surface mine reclamation in Washington. Persons engaging in surface mining activities must have an approved reclamation plan and a reclamation permit issued by the DNR. Along with these regulatory duties, the DNR has the authority to take enforcement actions when the law, a reclamation plan, or a reclamation permit is violated.

The DNR currently has the following enforcement authorities for surface mine violations:

- Order to rectify deficiencies: The DNR may issue an order to rectify deficiencies when a miner or permit holder conducts surface mining in any manner not authorized by statute, rule, a reclamation plan, or a reclamation permit. The order must specify the deficiencies and set a required time for compliance.
- Order to suspend surface mining: When a miner or permit holder fails to comply with an order to rectify deficiencies, the DNR may order that surface mining, on all or part of the operation, be suspended until the violations have been mitigated to the satisfaction of the DNR. When a miner or permit holder conducts unauthorized mining activities that create an imminent danger to health or public safety, the DNR may issue an emergency order to rectify deficiencies and suspend mining.
- Civil penalties: The DNR may impose a fine should the miner or permit holder fail to obey a DNR order. The amount of the civil penalty may not exceed \$10,000 for each violation, based on a penalty schedule set by rule. Each day an order is disobeyed constitutes a separate violation. The DNR's penalty decisions are subject to appeal to the Pollution Control Hearings Board.

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### **Summary of Bill:**

The Department of Natural Resources (DNR) is provided several new authorities with regard to enforcement, and several existing authorities are amended.

#### Amended Authorities

Order to rectify deficiencies: The DNR may issue an order to rectify deficiencies to a miner, permit holder or other person violating statute, rules, a reclamation plan, or a reclamation permit. The order must describe the deficiencies and set a required time for compliance. The order becomes final and effective after completion of administrative and judicial review.

Permit suspension: The DNR may suspend a reclamation permit, amending the current authority to order to suspend surface mining, when a surface mine is out of compliance with a final order of DNR. A suspension is final and effective after completion of all administrative review proceedings. No surface mining or reclamation may occur while a permit is suspended.

#### New Authorities

Notice of correction: The DNR may issue a notice of correction to a permit holder or other person violating statute, rules, a reclamation plan, or a reclamation permit. Issuance of a

notice of correction does not limit the DNR's use of other enforcement authorities. The notice must describe the corrections needed and provide reasonable time for the corrections. A notice is not an enforcement action and is not subject to appeal.

**Order to stop surface mining:** The DNR may issue an order to stop all surface mining to a permit holder or other person who engages in surface mining activities without a permit. The DNR may issue an order to stop surface mining occurring outside of a permit area to a permit holder that does not have the legal right to occupy the area. When a permit holder operates outside of its permit boundary, but within land it has the right to occupy, the DNR may issue an order to stop surface mining outside of the authorized area after the permit holder fails to comply with a notice of correction.

Alternatively, a permit holder may seek to cancel a reclamation permit in favor of a local development or construction permit. This may happen when:

- &sdot; the permit holder has received a development or construction permit;
- &sdot; the local jurisdiction and landowner agree to the cancellation; and
- &sdot; the local jurisdiction assures that construction or development is being implemented.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill ensures that the DNR has the tools it needs to remedy surface mining violations. Current law makes it difficult for the DNR to take timely corrective action and assess penalties against surface mining violators. The substitute senate bill represents significant work with stakeholders on reform and enhancement of the Surface Mine Reclamation Act. People are increasingly relying on illegal mines; it is easier to do this than to permit your own source. The industry encourages the committee to adopt the bill in its current form because it represents an agreement developed over time.

Stop work orders are only to stop illegal activity and not the work done by properly permitted individuals and mines.

Illegal mining activities create a competitive disadvantage for those small operators and other operators that are acting within the law. It also hurts the industry's image and does not reflect that the industry strives to be a steward of the environment.

(Opposed) None.

**Persons Testifying:** Senator Morton, prime sponsor; Ron Teissare, Department of Natural Resources; and Bruce Chattin, Washington Concrete and Aggregates.

**Persons Signed In To Testify But Not Testifying: None.**